

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, December 12, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Mary Bills, Jon Carlson, Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor. Kathleen Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Becky Horner, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held November 28, 2001. Carlson moved approval, seconded by Newman and carried 6-0: Carlson, Hunter, Krieser, Newman, Schwinn and Steward voting 'yes'; Bills and Duvall abstaining; Taylor absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Bills, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn and Steward; Taylor absent.

The Consent agenda consisted of the following items: **USE PERMIT NO. 142; FINAL PLAT NO. 01001, BARRINGTON PARK TOWNHOME 1ST ADDITION; FINAL PLAT NO. 01027, MUFF 5TH ADDITION; WAIVER OF DESIGN STANDARDS NO. 01020; and MISCELLANEOUS NO. 01013.**

Item No. 1.4, Waiver of Design Standards No. 01020, was removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Newman and carried 8-0: Bills, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn and Steward voting 'yes'; Taylor absent.

Note: This is final action on Use Permit No. 142, Barrington Park Townhome 1st Addition Final Plat No. 01001 and Muff 5th Addition Final Plat No. 01027, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

WAIVER OF DESIGN STANDARDS NO. 01020
TO WAIVE THE LOT WIDTH-TO-DEPTH RATIO
ON PROPERTY GENERALLY LOCATED
AT NO. 1ST STREET AND IRVING STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Carlson, Hunter, Bills, Duvall and Schwinn; Taylor absent.

Staff recommendation: Approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing due to an error in the name of the applicant. The Clerk was asked to change the name of the applicant to Nebraska Housing Resource (not Nebraska Housing Authority). Brian Carstens, the applicant's representative, concurred.

There was no public testimony

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

December 12, 2001

Duvall moved approval, seconded by Newman and carried 8-0: Steward, Newman, Krieser, Carlson, Hunter, Bills, Duvall and Schwinn voting 'yes'; Taylor absent.

CHANGE OF ZONE NO. 3337
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-1 RESIDENTIAL AND R-3 RESIDENTIAL
and
PRELIMINARY PLAT NO. 01014,
PARKER'S LANDING,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 80TH STREET AND CHENEY RIDGE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Carlson, Hunter, Bills, Duvall, Taylor and Schwinn.

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat, including a condition to show the extension of 80th Street.

Brian Will of Planning staff submitted 10 additional letters in opposition to extending 80th Street, which have been received since the staff report was distributed.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Pat Mooberry**, the developer. Hunzeker expressed appreciation for the staff's recommendation of approval. The only objection noted by Hunzeker is that the developer does not agree with Condition #1.1.2 or Condition #3.4.3, which indicate that the city will not be held responsible for any development costs associated with this subdivision. Hunzeker advised that the developer has been working with the Parks Department with respect to improvements abutting the park. Before these applications reach the City Council, the developer expects to have an agreement with Parks about what a fair share of infrastructure serving the park would be. Hunzeker indicated that he may appeal these two conditions to keep this process moving while they finish up that agreement.

Hunzeker also noted that the Commission will be hearing from some of the neighboring owners in Pine Lake who do not like the connection at 80th Street joining a stub street in Pine Lake, thereby providing access north and south from this subdivision to and from the Pine Lake subdivision. Hunzeker pointed out that this 80th Street connection is in accordance with the subdivision ordinance and has been shown all along. The developer has discussed this with the neighbors and the staff. The staff is requiring this connection and it was submitted in accordance with the terms of the subdivision ordinance and the staff's direction. The applicant has no opinion about whether this should be a street connection. As the Commission listens to potential solutions to this problem from the standpoint of those preferring not to have the connection, Hunzeker stated that the applicant needs some certainty as to whether it is going to be a street or not. If it is not going to be a street, they will build a

house there. It affects the grading plans. If the Commission decides to defer that decision, Hunzeker urged that there be a stringent time limit on when that final decision is made. The developer anticipates being asked to defer pending the annexation of Pine Lake; however, certainty as to the street connection is necessary in order to grade the site. Hunzeker requested approval of the staff recommendation.

Support

1. Bob Olson, 8001 Dougan Drive in Pine Lake, testified in support of the staff recommendation. He has lived there 4 years, was President of the Pine Lake Homeowners Association for two years and was on the SID Board. He acknowledged that he is probably a voice in the wilderness because the vast majority of the neighborhood does not want any of the streets opened up. He lives across the street from 80th Street. Protecting the solitude and beauty of this development is primary in all of our decisions and opinions, and he does not want any more traffic coming through Pine Lake, but he believes it would be beneficial to open 80th Street. No one knows how much traffic opening 80th Street will attract. Most of the neighborhood on the right side would not be affected by opening 80th Street. We ourselves (Pine Lake residents) are our own heaviest traffic. No one knows what will be added from the development to the north. Cheney Ridge at the north end is connected to 84th and he believes most of the neighborhood would go to 84th to get to the mega mall. Olson looks forward to having a road around the west side of his property to Hwy 2 to connect to the Berean Road. The opening of Northshore Drive is a neutral point.

One of the primary concerns of the neighbors is safety and that the kids can't play out in the street. Olson does not believe the children should be allowed to play in the street anyway. Olson stated that he did try to educate the neighborhood. Mooberry's plat has done a good job of offsetting the street so that it is not a straight shot into the Pine Lake neighborhood. Olson recommends that the development be approved and that 80th Street be opened. Having to go south of Pine Lake Road ½ mile and then back north just to get to 84th or 70th is not acceptable and creates a lot of traffic through the neighborhood. He does not foresee that many people coming through the area with the 80th Street connection. Emergency services may also be a concern if the street connection is not made. Once Pine Lake is annexed, they will need a fire station.

Newman referred to the new road on the west. When is the city going to put that road in? Olson did not know. They just keep hearing that it is "probably what they are going to do." Brian Will of Planning staff advised that the roadway on the west side is shown in the subarea plan. It is only conceptual at this point. There are no development plans for that area, but as that area is developed that road is anticipated.

Opposition

1. Steve Flanders, 6420 Eastshore Drive, Trustee of SID #2, which is in charge of the Pine Lake area, testified, stating that he is in a neutral position. A regular meeting of the Pine Lake SID #2 was held last Monday and a resolution was passed which he read into the record. The resolution states, in part, that:

Sanitary and Improvement District #2 of Lancaster County, Nebraska, is opposed to the extension of any connecting streets along the District's northern or western boundaries until such time as mutually agreeable arrangements for such extensions are made with the Sanitary and Improvement District #2.

The SID's position in regard to the development itself is that it is a good logical development, but the SID needs to have conversations with the city in regard to access to Pine Lake. The Pine Lake SID is on record as approving "one" connection to neighborhoods, and now there are three proposed. At that point in time, 80th Street was approved but that was before the proposed and current development. If the development is approved with the 80th Street connection, the Pine Lake SID needs conversations with the city before it is opened because there are concerns about the construction traffic for the 2-4 year period of time that it will take to build the homes. It's enormous and it is heavy equipment. The road on top of the dam is very sensitive and not constructed for that type of traffic. The SID has not been contacted by the city in regard to the cost, maintenance and the prolonging of the opening of that road. The SID needs some interaction before this decision is made.

Hunter asked Flanders whether he is a resident of Pine Lake. Flanders stated that he is a resident and is on the Board of Trustees, which is an elected position.

Steward asked whether the road network has changed since the SID was first established. Flanders noted that to be 30 years ago. It basically has not changed too much. But before the SID will approve or allow access, they need to know what connections are going to be made to 84th, Hwy 2 and interlocking the neighborhoods.

Steward then inquired whether the 80th Street stub was there before the houses were built. Flanders responded that there are several roads that were shown in the original community unit plan that were public right-of-way. Two of them were originally intended for the Pine Lake Addition and intended to be below the dam, which is no longer going to happen.

2. Bevan Alvey, President of Pine Lake Association, read into the record a letter from the Pine Lake Board of Directors in opposition:

The Pine Lake Homeowners' Association has called over six neighborhood meetings dealing with Pine Lake's future annexation and the new Comprehensive Plan.

Attendance at those meetings has ranged from 15-35 families. With a few minor exceptions, the vast majority of our neighbors wish to maintain the rural nature of our neighborhood and adamantly oppose the opening of the 80th Street stub road.

We recognize and embrace the open neighborhoods policy and if we only had residential neighbors to our south we would not oppose the opening of 80th St. However, we can't believe it is fair or proper to use that policy and ignore the extreme impact on the safety of our streets.

Please support us in closing the 80th St. stub road.

Alvey also handed out a map showing how the traffic flow is likely to occur with the opening of 80th Street. Pine Lake is flanked by the largest commercial areas in the entire State of Nebraska. The Pine Lake residents have been living in a relatively rural setting for the last 30 years. Therefore, their roads were designed with the idea of living in a compact small area. There are 131 families in Pine Lake with no sidewalks and no street lights. The streets are narrow and we have some blind curves. There are weight limitations on the street over the dam. The Mooberry development would be approximately 100 families. The Pine Lake residents would welcome the Mooberry development if that's all there was. When the Pine Lake neighbors first met with Mooberry, he had no objection to not opening up 80th Street because he was comfortable that his development would have plenty of access to everything around it. Mooberry attempted to submit a plat to the Planning Dept. that did not show 80th Street and he was told not to submit it without the opening of 80th Street. The problem is not Pat Mooberry's addition of 100 families—it's the 800 families that are adjacent to this area. Those 800 families will use 80th Street as the shortcut to the mall and the commercial areas. It is aggravated by the fact that 84th Street has not been moved and has not been widened, which is part of the plan to accommodate the traffic. The north/south connection to Hwy 2 is now a pipe dream. And the Berean Church has no interest in developing at all, so that north/south road may never be completed. Opening up 80th will cause a funneling of traffic through the Pine Lake area.

In summary, Alvey stated that the Pine Lake residents embrace the open neighborhood concept, but they do not want to create a through-way for 800 families to get to the largest commercial areas in the state. The Planning Department has done no studies on the traffic impact of opening up those streets. What is the compelling reason for jamming this street through before any of the other things have been done to alleviate the traffic?

Hunter inquired whether there are stop signs at the corners of Westshore Drive and Dougan Drive and Northshore Drive. Alvey believes there is a stop sign on Northshore Drive where it connects into Westshore Drive. There are no north/south stop signs.

3. Sharon Kresse, 8000 Dougan Drive, testified in opposition, showing several photographs and begging the Commission not to make this irrevocable decision that will endanger their children. The Pine Lake residents tried to work with the Planning Dept. and were told that all neighborhoods must be connected. “Yes, there are exceptions, but you don’t qualify”. In looking at the danger to the children, we are told, “don’t let them play in the street”. In the short street where Dougan turns up to the cul-de-sac, there are just a few homes and there are 13 children under the age of 14 in that concentrated area which is where the stub road would connect. On the weekends there are people out walking and children out playing—it’s a busy neighborhood. The dam has a blind curve at either end. The road over the dam drops off steeply on both sides. Kresse agreed that it is impossible to protect our children from everything, but it is so unnecessary to open up this stub road and bring additional traffic in. The Pine Lake residents are getting along just fine with the way it is right now. There is plenty of access to the north. Please do not make this irrevocable decision to open 80th Street.

4. Kerry Petersen, 7843 Amelia Drive, which is to the north of the proposed development in Edenton South Heights, testified in opposition. He has talked with a number of people in Edenton South. There are approximately 800 families in that area, which is served by a 3-acre park developed at the end of a gravel road. Edenton South Heights would like to see the city work with the developer to expand that park to the north and protect the tree line. As of yesterday, the trees were coming down. He believes that the developers were both contacted about that tree line. The Edenton South Heights neighbors would very much like to have an 8-10 acre park to serve this community. He has also talked with some people at the Berean Church. As far as they are concerned, there will not be a road that goes south of Highway 2.

5. Kent Seacrest appeared on behalf of the **Pine Lake Homeowners Association**. The neighborhood has become engulfed by housing on one side and a lot of retail and commercial on all other three sides. The Pine Lake Homeowners do not want to foil Mooberry’s efforts to build rooftops. But it must be done with “good planning”. The general rule on connectivity is that you do want to have your neighborhoods connected, but for every general rule there are some good exceptions. Seacrest proposed that this is one of those exceptions. In 1994, this neighborhood was proposed to be next to a very large regional shopping center. There is all sorts of language in the 1994 Comprehensive Plan talking about protecting this neighborhood from traffic and from changing its character. An agreement was reached during the 2000 subarea plan process to prevent traffic from coming through the Pine Lake neighborhood. We talked about moving streets, we quieted Pine Lake Road, we moved 84th Street over—we’ve done everything possible. The Subarea Plan said that we needed to study these stubs, but Seacrest has not seen a traffic study. Adding cars without sidewalks and street lights raises an interesting question.

Seacrest submitted proposed amendments to the conditions of approval. These amendments propose that the question not be decided today with this application, but at the time of the annexation of Pine Lake. Is the city ready to annex this neighborhood? The real

fundamental question is, what is the character of the neighborhood going to be after annexation? Will it remain no sidewalks and no street lights? If you know the answer to that question, the stub question is solved. If it is going to be urbanized with sidewalks and street lights, then the stubs are correct. But if you protect the existing character of the neighborhood, maybe the stubs are appropriate. Seacrest suggests "don't built it until the annexation is done". He understands that the annexation should be completed in the year 2002. We will then know the characteristic of this neighborhood and that is the time to go back to the stub question. By deferring this question, you also address the SID concern. If we do the annexation, the SID no longer exists.

Steward wondered whether it would be just as logical to argue that half of Edenton South is going to seek the most direct, more easily traveled route down to Hwy 2, going west to get east. The other half are going to go north to get east to Old Cheney. And the Parker's Landing traffic is going to go within their neighborhood to get to 84th. Isn't that just as logical a route? Seacrest agreed that it is a very viable route. The other routes are logical, but when you talk about transportation and drivers, you can throw logic out. People will cut through wherever possible.

Steward wondered about emergency vehicle access. Do your clients have any concern? Seacrest pointed out that the subarea plan shows that the Fire Dept. is planning a new fire station but the location is not yet determined. This is not the only way in and out of this neighborhood. There will be three ways. For example, in Southfork we asked you not to connect 68th Street and the Planning Commission agreed, and Southfork only had one way in and out. This one has three. The question is whether we can discuss it in a bigger context than just trying to be traffic experts.

Hunter inquired as to when the first proposed retailer is going to open in the new center. Seacrest believes it will be constructed in 2002 and the openings will probably be more in the 2003 range. Hunter commented then that realistically, as far as traffic generated by the shopping center, it really isn't even a consideration for at least 18 months. Seacrest concurred.

Hunter noted that in order to come from the north residential area to the new subdivision into the south, you have to make 7 turns back and forth. She does not see anyone concerned about the increased traffic coming north. Is this a realistic fear? Seacrest believes that it is. He has gone on residential streets to avoid the Gateway arterials.

Staff questions

Newman asked staff to respond to the timeframe on 84th Street improvements. Dennis Bartels of Public Works did not have an exact answer. The year 2003 is the first project in a series, and 2003 is the part to relocate at Pine Lake taking it all the way north through the existing rural section.

Carlson asked for staff reaction to the proposed amendments to the conditions of approval submitted by Seacrest. Brian Will of Planning staff responded that the staff would not change its recommendation. The staff continues to recommend that the street connections be made.

Bills asked staff to respond to having no contact with the SID. They have to maintain those roads and she knows the road across the dam is narrow and not built to handle heavy equipment. Has there been any talk by the city about a response to the SID resolution? Brian Will was not prepared to respond to the resolution as this is the first the staff has seen it. Relative to this proposed development, Will explained that there has not been any cause to have dialog with the SID. Rick Peo, City Law Department, further responded, stating that he is not sure how the street systems are set up and affected by traffic regulations within the SID. In the city, we would put restrictions on weight and type of vehicles that can use certain roads that cannot handle the traffic. The SID is under private ownership and he does not know who regulates their traffic control devices, etc. He is not sure what type of public access easement might be on those roads.

Steward commented that upon annexation, like all infrastructure, the road system would be up for re-evaluation in terms of traffic control, speed limits, design standards, etc. Peo agreed that if the city annexes and assumes ownership, the city would then control the roads. There is no timeline set for this annexation; however, there is general discussion going on about that concept.

If the Seacrest amendments were approved, Bills wondered if the city would give Pine Lake time to bring the roads into conformance. Peo suggested that those are all issues to be considered during the annexation process.

Response by the Applicant

Hunzeker just became aware of Seacrest's proposed amendments at this meeting. The applicant has no objection to the request to not do 80th Street, and the applicant doesn't have too much objection to deferral of the decision on 80th Street. But the phasing of the development of this project is going to go from west to east, so we're going to be developing the area basically west of 80th Street prior to the area east of 80th Street. There will be access at 80th Street going north in the first phase; there will be access to Ashbrook and Stevens Ridge Road on the west. This applicant would be agreeable to a condition that a note be

added to this plat indicating that the plat would be developed in at least two phases and 80th Street would not be included in the final plat of the first phase. That would take 80th Street off the table for at least a year. Hunzeker suggested an alternative to the Seacrest proposed amendment. Condition #1.1.14 could be amended to “add a note that final platting of this subdivision will be done in two phases and that 80th Street would be included in Phase 2.”

If the Commission chooses to do the Seacrest language deferring the street, the developer would request that all language after the first sentence not be included because in addition to deferral, the Seacrest amendment requires the developer to construct and dedicate a pedestrian way in the location where 80th Street is shown and the developer does not want to do that. If they are not required to do 80th Street, Hunzeker believes the developer should be able to build a house on that lot and not be required to provide the pedestrian way. If there is a need for access, then let's have the access. We either want to control that ground or we want to build a street. Again, we are not pushing for the street. We do not want to do a pedestrian way easement and sidewalk through there and not have the ability to build a house there if we do not build the street the staff is requesting.

In addition, if the Planning Commission approves the Seacrest amendments, Hunzeker again suggested that all language after the first sentence be deleted, and that language be added which states, “However, if annexation has not occurred within one year of approval of this preliminary plat, then the developer may proceed with the improvements as shown”.

Hunzeker believes that the staff intends to initiate the Pine Lake annexation shortly after the first of the year.

Public hearing was closed.

CHANGE OF ZONE NO. 3337

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 12, 2001

Duvall moved approval, seconded by Hunter and carried 9-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Bills, Duvall and Schwinn voting ‘yes’.

PRELIMINARY PLAT NO. 01014, PARKER’S LANDING

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 12, 2001

Hunter moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated November 2, 2001, seconded by Steward.

In looking at this whole proposal, Hunter commented that it seems like everything for which all parties are seeking deferral is happening anyway. Annexation will occur, and the shopping center is not going to be developing any traffic until probably 2003. So, in terms of deferring

for the road requested by Seacrest or the further amendment requested by Hunzeker, it is going to happen by normal development because they are developing the western side first.

Newman understands the neighborhood's concerns. She thinks every neighborhood has the same concerns. Her concern is if there are substitute north/south corridors that will take that traffic off, and she believes the developer has been diligent by putting in some extra jags to prevent people from thinking this is an easy cut-through. As long as 84th and the 76th/77th corridor goes in, she thinks the neighborhood is going to be safe.

With regard to the so-called "larger issues" that were brought up by the neighborhood attorney, Steward commented that we all know that this is only one of several communities that are being urbanized around it, and there will be more. His opinion is more about the larger issues, which are connectivity, emergency vehicle access, timely access to the community, and ultimately, the standards of the street to control the traffic in a more urban neighborhood pattern. Steward also believes that the fact that the So. 80th Street stub has been a part of the original plat of this development indicates that it has been forever known, or should have been forever known, that this is likely to be a north/south street that goes somewhere. He thinks the larger issues are connectivity, urbanizing to meet standards and safety through access to emergency vehicles.

Duvall believes that both the applicant and the neighbors are striving for definition of a time line. We are still assuming the construction schedule will be during a given time and during that time period things will evolve and be in place.

Schwinn agreed with the previous comments.

Motion for conditional approval, as set forth in the staff report, carried 9-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Bills, Duvall and Schwinn voting 'yes'.

CHANGE OF ZONE NO. 3347

A TEXT AMENDMENT TO THE ZONING ORDINANCE

REGARDING SIGNAGE IN RESIDENTIAL DISTRICTS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn; Bills absent.

Staff recommendation: Approval.

Mike DeKalb of Planning staff submitted an additional letter in opposition from Stacy James with concerns about allowing a commercial sign in a residential area.

Proponents

1. Mark Hunzeker appeared on behalf of **U.S. Bank**. Hunzeker believes that this must be about the fourth time this issue has been on the agenda in one form or another. The last time this was on the agenda, it was in the form of a rezoning request for a narrow strip of land extending from the existing commercial zoning for the bank out into the area which is subject to the special permit for parking for the bank along 27th Street. The purpose of the previous change of zone was to construct the very same sign which is proposed to be constructed under this text amendment by special permit. After the hearing on the change of zone, there was a lot of discussion about how to solve this particular institution's need for some exposure and some identification that is visible from the street as opposed to the sign now covered by trees and invisible from either direction. The applicant had offered to eliminate the existing pole sign in lieu of the ground sign but there was no convenient way to require that other than by contract zoning, which the City Law Department continues to discourage.

Therefore, the applicant and the staff went back to the drawing board to try to come up with a way to accomplish the Bank's goal while maintaining the maximum degree of control possible.

This is a text amendment which would allow the City Council to waive a sign restriction associated with special permits for parking to allow a sign of up to 40 sq. ft. to be placed within the front yard setback in conjunction with a special permit for parking, which by definition has to be associated with a use like this.

The next item on today's agenda is the proposed special permit that places the sign 15' back from where the original request would have placed the sign. The applicant had originally requested to place the sign virtually out to the property line. The staff requested that it be moved back 30'. This proposal puts the sign back 15'.

Hunzeker stated that this is the second time the Bank has come to the Planning Commission with a proposal. The staff has endorsed this proposal to accomplish the goal of the applicant.

Hunzeker believes the text amendment stands on its own and will allow a sign up to 40 sq. ft. in the front yard setback in conjunction with a special permit for parking. It must go to the City Council and cannot be approved by the Planning Commission.

Hunter had concerns about the special permit in residential areas. Hunzeker suggested that to be almost by definition because the special permit being referred to is a special permit for parking in residentially zoned areas, specifically, parking associated with commercial uses in residentially zoned areas. In this particular case, the buffer along 27th Street was done with that in mind so that the commercial zoning district would not get up to 27th Street. We don't propose to do that. But the parking along 27th has always been in residential zoning.

Steward wanted to know whether we have any sense of what this change to text might bring upon in terms of other similar applications. We all know that residential zoning is very close to "O" Street all along "O" Street and this would be one of the biggest concerns -- are we opening a door for new sign proposals? Mike DeKalb of Planning staff explained that the language being amended already allows a 20 sq. ft. sign outside the front yard setback for any special permitted use in any residential district. The requested language would increase the size to 40 sq. ft. and allow it to be placed in the front yard with City Council approval and only for parking lots allowed by special permit in residential districts. It includes all residential districts when they abut certain commercial districts. There are a fair number of those special permits for parking. He agrees that it gives additional opportunity for more requests but he would not guess how many.

Newman recalled 44th & "O" where they wanted to expand the parking lot in a strictly residential area. This amendment would allow a 40' illuminated sign just off "O" Street. DeKalb clarified that this amendment would allow the request for a larger sign closer to the street than is allowed today. They could put one up today, but not in the front yard.

Schwinn commented, however, that according to parking regulations the business cannot take access to its parking lot off a residential street. DeKalb agreed.

Carlson inquired as to which portion of the Comprehensive Plan supports this recommendation of approval. DeKalb stated that it is difficult to pinpoint a section of the Comprehensive Plan on text amendments. He suggested that there is general language in the Comprehensive Plan relative to support of neighborhoods, support of commercial areas and support of streetscape. These circumstances do need to be weighed. DeKalb could not cite specific language to allow additional signs in the front yard.

Opposition

1. Bob Ripley, resident at 3022 Williams Street, testified in opposition. He lives in the Country Club Neighborhood and serves on the Country Club Neighborhood Association board, but he is not appearing on behalf of the Board today. He feels strongly enough as an individual resident to appear to express his opposition. He is very disappointed in the process that US Bank has chosen to go about this signage. He would have hoped they would have gone to the Neighborhood Roundtable since it is not just a South 27th and Country Club Neighborhood Association issue but a change of language to the zoning law. Ripley believes it is very poor public policy to consider this change. When this area (Country Club Neighborhood) was first developed in the mid to late 60's, it was quite clear that there was great concern given to buffering residential properties to the adjacent commercial uses. Ripley personally believes that as subsequent residents move in and out, they have similar expectations that those quality of life issues to buffer commercial from residential will be maintained and preserved by the city long term. This request unravels that from a long term sense.

Ripley suggested that the proposed language lowers the bar for maintaining a buffer between residential and commercial properties. Not only is it poor policy for this particular location on South 27th Street, but he is also opposed in terms of the policy and the precedent it sets long term. This text change affects all residential areas in the city that are near commercial uses, not just US Bank's property on South 27th. It is bad public policy to change law for the benefit of one applicant that weakens the zoning protection for all neighborhood and residential areas city-wide. He is very strongly opposed to this change.

Irrespective of the public policy issue, Steward asked Ripley whether it matters in his neighborhood that this proposal makes a better circumstance out of the signage. Ripley responded, stating that he can't get past the specific location because of the long term implications. "Do I want to design a sign that perfectly fits the needs?" No, he does not because the ordinance is the best public policy statement we have for the benefit of residential and commercial properties city-wide. He will not make an exception for one applicant.

2. Carol Brown, 2201 Elba Circle, Secretary of Landon's Neighborhood Association and Chair of the Mayor's Neighborhood Roundtable, requested that this be deferred so that the neighborhoods can have some input into this decision because it will affect all neighborhoods. Hunzeker is meeting with the Neighborhood Roundtable tomorrow and she appreciates his efforts.

Hunter wondered whether Brown would still want a deferral if the Commission voted to deny the text amendment. Brown concurred that deferral would not be necessary if the application were denied; however, she has had several phone calls from neighborhoods that are interested in this application and they are not interested in letting it go by.

3. Ken Winston, 1915 D Street, appeared on behalf of Near South Neighborhood Association in opposition to the text amendment. He agreed with Ripley's testimony. It is the Near South Neighborhood's position that this would be a bad precedent for the community. If this is allowed, other businesses will automatically want bigger signs. Wells Fargo is right across the street and he assumes they will want the same kind of signage. Personally, he does drive down South 27th and it is his perception that it ruins the residential character of the area. What is the problem being addressed by this application? The applicant did not indicate that they would be losing any business. He does not believe the sign will have any impact on the bank's business. He requested that if the Commission does not vote it down, it should at least be delayed for some neighborhood input.

4. Dan Marvin, 2523 Woods Blvd., testified in opposition. He has lived here since 1985. He has a vivid memory of an elderly lady standing up at the top of the hill and pointing over the hill saying, "that shopping center should have never been there". When she bought her land, that was not going to be commercial property. There was a bargain struck between the residential and the commercial, and that bargain was the strip of R-1 zoning with the restrictions that go with it. Now we are trying to tilt that bargain and change it from what was

originally intended. This is not fair. He lives across the street from some visually impaired people who bank at US Bank. They have no trouble walking up the street and finding that bank whether they have a big sign or no sign at all.

5. Charles Hohenstein, resident of Bishop Square, 3901 So. 27th, testified in opposition on behalf of the Bishop Square President and Bishop Square Homeowners Association consisting of 48 residents. The residential character of the neighborhood is one important reason that residents are willing to invest significant sums in the Square. All residents of the Country Club Neighborhood Association dread the destruction power of creeping commercialism. It is surprising that this bank has returned with this proposal in light of the opposition. Bishop Square urges that both the text amendment and the special permit be denied because 1) it sponsors commercialism; 2) there is no basis to deny a similar sign for Wells Fargo; 3) this change will affect all of Lincoln—it would not be fair without first notifying all of the other associations; 4) it would undermine the whole buffer zone concept to protect residential neighborhoods from commercial intrusion; and 5) an important goal of the Comprehensive Plan is to provide neighborhood centers and businesses for neighborhood residents that are not intrusive upon the neighborhood. This sign would be an intrusion.

6. Linda Wibbels, 2740 Royal Court, testified in opposition. She lives in the neighborhood and has for over 25 years. She appreciates the standards that have been set. She also views this text change as a person who feels a responsibility to go beyond her own neighborhood and take a look at the impact on the entire city. A text change has long been a gimmick or vehicle for accomplishing what someone wishes to have. Not only does this affect the entire city, it also becomes more obtrusive to different properties by allowing a bigger sign and allowing it in the front yard setback. This text change would guarantee a different look at the kind of signage in other residential/commercial areas. What prohibits anybody else in any shopping center from going into this type of area and getting signs? For 40 years, the existing language has worked extremely well. Being a realtor, her goal is to help people protect the largest investment they will ever have. Is zoning really protective? It's here, it works and it should not be changed for one particular person.

Response by the Applicant

Hunzeker believes it is important to just reiterate that these regulations, although they have been around for 20+ years, were not brought down from a mountain on a stone tablet. They are not biblical; they are not divine; they are invented by people like you and me to address situations that they think will occur in the future. It appears that the special permit section of the R-1 Residential District has been amended 2 dozen times. The number of special permitted uses allowed in the R-1 District goes from a through z and includes such things as mobile home courts, health care facilities, broadcast towers, public utility purposes, mobile home subdivision, outdoor seasonal sales, domiciliary care, child care, neighborhood support services, clubs, etc. That tells you that there are lots of circumstances which were not

foreseen when these regulations were initially drafted, and for that reason the special permit section of the ordinance has some fairly specific language about why and how to deal with those things.

Hunzeker went on to state that certain developments tend to be incompatible with other land uses in the same zoning district but may be found acceptable when conditions protect abutting uses and the character of the area. There are uses which belong in certain districts, and one of them is parking lots associated with commercial uses. Special permits for parking associated with commercial uses has been a special permitted use in residential districts for as long as he can remember. So it is not unconscionable to think there might be a need to amend how we do those things and maybe think about the signage associated with it, particularly in a situation where you might have an opportunity to improve the overall signage package on a site. It is an overstatement to say that this is something that never should be done just because a single applicant requests it. The Planning Commission is here to protect the health, safety and welfare of the community.

Hunzeker reiterated that the need for the sign is for people driving on 27th Street to know in advance where they need to turn. Right now when on 27th you can't see a sign at US Bank. That is why this application is here. It is reasonable to amend the text to do this. He suggested that the Commission might require that the parking lot associated with the commercial use actually abut the commercial use because it is allowed to be 300' away. And the Commission might also consider adding the requirement that it abut a major street. Hunzeker believes that these two things would help meet some of the objections raised today.

Staff questions

Newman noted that the staff report on the special permit (Special Permit No. 1237A) says the City Council approved a special permit to allow the parking lot with a landscape plan in excess of design standards. Newman wanted to know whether she is to assume that the landscape plan in excess of design standards was required because it was a special area where they decided that the transitional residential area should look more like a residential area. She reads it as meaning that we do want to maintain certain areas as residential transition to look like residential areas. DeKalb suggested that the facts are set forth in the staff report and are based upon the record. He does not know the rationale or thought that occurred at that time. The Commission must make their own presumptions based on the facts presented.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

December 12, 2001

Carlson moved to deny, seconded by Hunter.

Hunter believes this is a bad idea. This has been before the Commission a number of times. What started these discussions was the implication that if the sign was not able to be more visually available, then they will have to take down trees. The protections set up for these neighborhoods cannot be summarily chipped away by small increments of text changes that allow new things to come forward and be placed in residential communities. If they have to change landscaping to see the sign, then that may need to be done. She does not want to continue to diminish residential areas.

Duvall stated that he will vote in opposition to the motion. We have an ordinance that allows 20 sq. ft. and all this amendment does is modify that to 40 sq. ft. It is not as big of a change as is being presented by the opposition.

Schwinn will also vote against the motion. This is good discretionary power that the City Council and Planning Commission should have. He does not believe it is a very wide spread situation. It has nothing to do with putting a sign in the middle of a neighborhood. It must be in conjunction with a special permit for a parking lot. South 27th is a very unique situation in the city. He thought R-1 was set in there so the city would have a more convenient way to widen 27th Street. He believes that we can create situations through the special permit that would allow us to take down a pole sign and put in a ground sign. This does not set a precedent.

Steward stated that he will reluctantly vote in favor of the motion to deny. His reluctance is this – in the context of the planning that is currently underway, we are going to have to collectively face closer working relationships and closer proximities to commercial and residential in this city. The old idea of these distant separations between residential and compatible commercial is just that—an old idea. He believes we have to find new ways to advertise and acceptable ways for traffic to find their way in these closer proximities. He was originally in favor of the intent of this property owner and still is because what they are trying to do improves the immediate site situation. However, by doubling the allowability of sign area puts us in unknown territory for the sake of one situation and he does not believe that is basis for changing the public policy.

Carlson added that it not only doubles the sign area, but it allows the sign in the front yard setback. The zoning code is meant to address the community's desire as to quality of life, where they live, where they shop, and where they work. In conjunction with the Comprehensive Plan, there are going to be exceptions and we will weigh that in light of the public testimony. He sees nothing in the Comprehensive Plan that calls for this text change and he does not believe there has been anything presented that mandates this change. The process is functioning as it should. This is a poor public policy choice.

Taylor is in support of the denial for various reasons. This situation existed prior to purchase by the bank. With the considerable opposition, he must agree with their wishes.

Motion to deny carried 6-2: Steward, Newman, Krieser, Taylor, Carlson and Hunter voting 'yes'; Duvall and Schwinn voting 'no'; Bills absent.

SPECIAL PERMIT NO. 1237A

TO ALLOW A SIGN IN THE FRONT YARD SETBACK

ON PROPERTY GENERALLY LOCATED AT

SOUTH 27TH STREET AND WOODS BOULEVARD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn; Bills absent.

Staff recommendation: Conditional approval. This application requires approval of Change of Zone No. 3347.

Proponents

1. Mark Hunzeker appeared on behalf of **U.S. Bank**, the applicant. Hunzeker suggested that in light of the Commission's action to deny the proposed text change (Change of Zone No. 3347), he would like to put on the record and point out one more time that this effort is to reduce the total signage on this site and would have resulted in a restriction on the total signage available to U.S. Bank at this site, including but not limited to the ability to have an up to 150' sq. ft. pole sign, 35' tall, and a wall sign of up to 35% of the total wall area of the building. In Hunzeker's opinion, It is really unfortunate that we are unable to reach some way of putting a sign on this site that is visible from the street for this business because if you want to really think about horrible possibilities, the horrible possibility is that the bank finds a new location, which is more visible with easier access, and this site becoming a different kind of business that utilizes all of the available signage. In denial of the previous application (Change of Zone No. 3347) and this special permit, the Commission has at least opened up the possibility of something at least as bad or worse than the worse things mentioned by the opposition.

Hunzeker further pointed out that the applicant asked the staff for advice on how to proceed. There have been two potential solutions recommended by staff which have been rejected by the Planning Commission.

Opposition

1. Linda Wibbels spoke as a citizen and neighbor in opposition. She does not disagree on signage and the taste of signs. She much prefers monuments signs; however, that is not the case here. She really feels quite badly that the neighborhood was never approached directly by US Bank. She feels very badly that some of the trees were used to justify this request. She

also feels badly that she might have to be fearful that another business may go in there. She does business with US Bank, but this special permit is just not appropriate. The arguments used for this have been visibility. She complimented City Parks for keeping that canopy of trees along the parkway really quite high. She can see the pole sign and the sign on their ATM. She was told that US Bank happened to have an extra ground sign and this was a good use for it. As far as using the visibility argument, then will someone please explain why the banner has been located illegally out in the right-of-way for two years? If that banner has not brought in more business, then why are we to assume that a ground sign will do so?

2. Bob Ripley, who lives in the Country Club Neighborhood, testified in opposition. He believes that the trees that the bank has suggested might be removed are on city property. However, if the trees are on the bank's property, it is clearly the bank's choice to remove the trees, if necessary. Ripley stated that he would be the first person to applaud that laws, codes, and ordinances are clearly meant to be changed, but by the same token the implication was that this change needs to be made because other changes have been made. The issue is the value of the change. Our neighborhood happens to be a group that is organized. He is equally concerned with this special permit and the text amendment for those neighbors that are not organized and not represented on this issue.

Response by the Applicant

Hunzeker advised that the applicant did contact the Country Club Neighborhood Association. Hunzeker was told over the phone by Jim Pattavina that, in his opinion, there was no problem with the initial application and that he would let Hunzeker know if there was a problem. Then just before the first hearing Hunzeker received a letter in opposition from that neighborhood.

Secondly, it has been implied that the bank is threatening to take down trees and move the bank. That is not the case. It has never been said that there would be trees removed in order to see the signs. That was not said by anyone representing the bank. Furthermore, it is correct that we have said that there are trees that obstruct the view of the sign and there is some landscaping on this site that does obstruct the view. We have said we do not want to take those things out. That is why we are here. If it was a matter of getting out a chain saw, we would have done that a long time ago. It is not and never has been the bank's purpose to put this sign up solely to attract business. The sign is for identification of this building and this site, and for direction of people who want to get there. We are not thinking that this will change the number of customers that the bank has. It is identifying the site in a way that is compatible with the neighborhood. It will be a tasteful ground sign that will not infringe on anyone's residential area.

Steward commented that it is not comfortable for the Planning Commissioners to continue to vote against the recommendation of staff. He asked staff whether we have exhausted all of the possibilities for an individual solution to an individual situation without affecting the entire

city. Mike Dekalb of Planning staff stated that for this particular size sign at this particular location, it requires a change of zone or a text amendment. He is not aware of another alternative at this time.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

December 12, 2001

Taylor moved to deny, seconded by Hunter.

Hunter wanted to make sure the record is correct. She does not believe there was a threat to remove trees. It was presented as the options that were available to them.

Steward indicated that he will make an unusual vote in favor of the special permit, knowing that the previous action does not permit this circumstance. However, he continues to believe that there has to be a way to do this without affecting new opportunities in different situations in different circumstances. In his opinion, this happens to be an individual situation which improves the business intent, the aesthetic intent and the character of the environment and the neighborhood. That is what he thought the special permitting process was about. Either we haven't written the right language or we have a circumstance where our planning and zoning is so inflexible that we cannot respond to an individual circumstance. He will vote in favor on principle.

Taylor does not believe the sign is necessary.

Hunter asked Law whether it is appropriate for the Commission to vote for a permit where the Commission has voted to deny the text amendment that would allow it. Peo acknowledged that the conditions of approval on the special permit require approval of the change of zone. So technically, a person could vote in favor of the special permit. However, he believes it is inconsistent action and gives a mixed message as to how serious you were about the denial of the text amendment. When it goes to the City Council, the Law Department will draft a resolution that will impose the conditions of approval and that will be before the Council.

Motion to deny carried 5-3: Newman, Krieser, Taylor, Carlson and Hunter voting 'yes'; Steward, Duvall and Schwinn voting 'no'; Bills absent.

SPECIAL PERMIT NO. 1941
TO ALLOW STORAGE OF VEHICLES FOR SALE
IN THE FRONT YARD, ON PROPERTY
GENERALLY LOCATED AT
NO. 29TH STREET & CORNHUSKER HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn;
Bills absent.

Staff recommendation: Denial.

Proponents

1. Mike Kabraei, the applicant and owner of **Best Buy Auto**, presented the application. He testified that all of us have been directly or indirectly affected by 9/11, but he believes that small business has been affected the most. Used car dealerships have been hurt more than any other business. Now, his small used car business is being put under pressure by the city to move the cars back 30'. This is possible for some businesses but not possible for others. If it is not possible, what is the other opportunity? He believes the other opportunity is to lose the business.

Kabraei stated that he has followed the rules. When he was asked to move the cars back, he applied for the special permit. He pointed out that the City Council approved a previous special permit near this location. There is no other business that he would block by parking his cars in the front yard. He has not been given a reason why he should not park the cars there. It doesn't hurt anyone at this location. His property line is back from the curb and there is grass and sidewalk. As a Lincoln resident, he wants to be able to run his small business and he needs the Commission's support and encouragement to a person who voluntarily applied for this special permit.

Schwinn advised that the Commission does see this issue quite often. The staff has suggested that a 15' landscape buffer be installed. Schwinn believes that the 15' buffer does a good job to create better streetscapes.

There was no testimony in opposition.

Staff questions

Newman understands that the City Council is working on some sort of legislative change to standardize this to require a 15' landscaped area. Should this application be deferred? Ray Hill of Planning staff advised that there has been no formal application to make any

adjustments. There has been some discussion with the City Council, but there is no official proposal to change the ordinance at this time.

Steward inquired whether the city is in the process of doing more policing of this along Cornhusker Highway. Tom Cajka of Planning staff believes that Building & Safety has issued some citations and are being more diligent.

Steward inquired as to how many nonconforming properties we have in this situation. Cajka did not know. This is the only application in process at this time. Steward wants to know if we are acting uniformly in a consistent manner with all the property owners that are nonconforming. Ray Hill of Planning staff advised that the Building & Safety Department is the zoning administrator and they would be the ones to send out the letters. Hill offered to get a report from them. He does know that Building & Safety has been making inspections and sending notices to those that are in noncompliance. There has been some effort in the recent past to equalize the treatment.

Schwinn pointed out that directly west across Dead Mans Run there is another used car lot with this type of special permit. They have the landscaping in place. Cajka noted that to be Special Permit No. 1841, which received conditional approval by the Planning Commission with a requirement for additional landscaping. The applicant appealed that condition to the City Council seeking a waiver of the additional landscaping. That was approved by the City Council. The staff had recommended denial. Schwinn believes they had landscaping in place from the previous restaurant and parking lot.

Schwinn suggested to the applicant that without his willingness to do the landscaping, there is a good chance the Commission will vote to deny the application. The applicant indicated he would be willing to work with the staff on a landscape plan if the Commission defers the application.

Duvall moved to defer, with continued public hearing and administrative action scheduled for January 9, 2002, seconded by Taylor and carried 8-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn voting 'yes'; Bills absent.

CHANGE OF ZONE NO. 3345
FROM H-1 INTERSTATE COMMERCIAL
TO H-3 HIGHWAY COMMERCIAL
ON PROPERTY GENERALLY LOCATED
AT NO. 56TH STREET AND ARBOR ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn;
Bills absent.

Staff recommendation: Denial.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Whitehead Oil**. This property is located at 56th & Highway 77 (intersection of I-80 and Hwy 77). This property is a little over 1.5 acres, odd-shaped, nearly triangular, and has been zoned H-1 Highway Commercial for a very long time. There was a filling station which operated for some period of time and there is still a building on the property. It has had more than one operator. It has been through difficult times. It has never really been successful. Unfortunately, the H-1 zoning allows for a very limited range of uses, i.e. restaurants, service stations and hotels and motels. The applicant purchased this property some time ago and it has not been operated as a filling station by Whitehead Oil. This is simply an attempt to find a way to put this property to some use. In looking at potential hotels, motels, service stations and the like, it is apparent that this is not a good site for that and is not big enough.

The original application was for a change of zone to H-4 and was filed in error. The H-4 zoning district takes this piece of property from 1.6 acres down to less than .6 acre in terms of its usable area because of the setbacks imposed by that district. Furthermore, the H-4 District does not permit parking in the front yard, so it is a very difficult parcel to use with H-4 zoning. The application was revised to H-3 because of that. H-3 is very similar to H-4. The uses are nearly identical. The staff report indicates that it is not consistent with H-4, but Hunzeker believes the uses in the H-3 are much more consistent with H-4 than the H-1. Furthermore, the staff report points out H-3 allows parking in the front yard, but Hunzeker pointed out that parking in the front yard is also allowed in the existing H-1. The setback requirements of H-3 are probably more consistent with the existing buildings east of 56th Street along Arbor Road than the 50' setback in the H-4 because all of the buildings were built prior to widening Arbor Road. These existing buildings are closer to the H-3 setback than the H-4.

Hunzeker further suggested that nobody does bottling works or creameries. We're not going to do that. It is silly to point out those things. Motor home sales can be accomplished in H-4.

You can sell heavy equipment in H-4. There is nothing inconsistent about the uses allowed in H-3 versus H-4. The only real difference is that we have the ability to utilize that front yard for parking. We are trying to put this property to a reasonable use, consistent with the surrounding property, and H-3 is the district that allows us to do that in a reasonable manner. We think that this is an appropriate change. It is not inconsistent with the surrounding area.

Carlson inquired about signage. Will H-1 to H-3 provide other signage? Hunzeker suggested that the signage is also similar. It says in the report that there are more signs permitted in H-3 than H-1 and H-4. But Hunzeker believes that H-3 and H-4 are basically the same. There are very few differences in signage. The one big difference that stands out is that in H-1 you can do a pole sign near the interstate of up to 80' in height. You can't do that in H-3 or H-4. They are not requesting this change of zone for the purpose of signage.

Carlson asked whether the applicant has a potential use. Hunzeker responded, stating that they are just here to try to get this property zoned in a district that allows the property to be put to use. In the current state it is obvious that it is not going to be successful as a service station. We think it is too small and as configured it is just not usable for a motel or hotel, restaurants, etc. There is not enough in that area to justify even trying a restaurant.

Carlson inquired about the use options in the H-3. Hunzeker suggested that the H-3 gives a wide range of options. It is basically the same range that exists under H-4. In fact, a couple years ago there was a study being conducted that suggested combining all of the H districts into one.

Steward believes, however, that all of this thinking is new thinking since the purchase of the property. Hunzeker responded, stating that this property has been a separate lot since probably 1983.

There was no testimony in opposition.

Carlson asked staff to discuss the signage issue. Becky Horner of Planning staff believes that there are big differences in signage. H-3 allows one on-site ground sign and one pole sign per business per frontage. This property has double frontage so they would have double signs. This is different from H-1 and H-4. The interstate sign can be 360 sq. ft. versus 300 sq. ft., and the off-premise pole sign can be 700 sq. ft. and 45' high as opposed to 300 sq. ft. and 35' high.

Carlson believes the two issues are setback and signage. He sought clarification of the reason for the staff recommendation of denial. Horner advised that the H-3 zoning is inconsistent with the area; there is none in the near vicinity; the signage and the setbacks are inconsistent with the surrounding zoning as well.

Response by the Applicant

Hunzeker is dazzled by the off-premise sign discussion. We can't do an off-premise sign on this property because we are too close to both Hwy 77 and I-80 under the new regulations for off-premise signs. The big signs are not permitted on this property, and the rest is very similar. We have new regulations that apply to off-premise signs and they are not permitted within 800' of the Interstate or Hwy 77 (the entrance corridors).

Schwinn wondered whether the Interstate begins with the on-ramp. Hunzeker guaranteed that it does. But the issue for this applicant is not signs. It's just the use of the property. We don't care about having double frontage. Those signs takes up room in addition to costing money.

Steward asked for clarification of the neighbors to the west and the east. Hunzeker stated that the neighbor to the west is a Phillips 66 Station across 56th Street; the neighbor to the southwest is TO Haas Tire; the neighbor immediately south is the truck equipment service facility; and the neighbor to the east is tractor trailer sales. The Whitehead station across 56th Street has survived when the other did not.

Carlson wondered whether a change of zone to H-4 with a waiver of the setback requirements would require readvertising. Rick Peo of the City Law Department advised that there is no waiver allowed on a change of zone request.

Hunzeker pointed out that a lot of this property is taken up by yards. H-4 simply doesn't work for that reason, and the uses are the same. We have the ability with the H-1 to park in the front yard. We think that H-3 is a better use of the property and it is consistent with what's out there.

Carlson wondered whether there would be further public process for the specific use of the property. Hunzeker suggested that there could be a planned service commercial special permit, but that would be difficult for a parcel this size, and the other would be a flat variance to reduce the front yard setbacks on the property. However, he does not know that this is a situation that warrants a variance. The real issue is whether this zoning district is appropriate, and he thinks it is.

Schwinn noted that on the special permitting process there is a 2-acre minimum in residential districts. Does that count in commercial districts? Horner suggested that if the property is zoned H-3 there is no further review required for the specific use.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

December 12, 2001

Duvall moved approval, seconded by Schwinn.

Duvall thinks the applicant has their hands tied and this will give them some flexibility to utilize the property.

Schwinn added the fact that the property has so much frontage on it. One-fourth acre is the difference in the setbacks, so it is a hardship that would be put on the property owner to go to H-4. Movement out of H-1 gives them more flexibility economically and more viability.

Noting that the property has been zoned H-1 for some time, Steward assumes the property owner knew what the zoning was when he purchased the property and understood the options. However, in terms of planning, he does not see that this request is out of line with both what's already out there and the general Comprehensive Plan, none of which ever should have happened to begin with in this entrance corridor. This last piece of property has a highway quasi-industrial use. He does not think it is going to make the entrance on Hwy 77 any more or less attractive.

Carlson is sympathetic to the setback. He brings up the signs because a future owner might make use of the zoning with the double frontage for signs.

Taylor commented that in this instance he doesn't see any opposition and he thinks the applicant made an interesting point that there is not that much difference in the H districts. He does not see any reason not to change it to H-3. He will vote in favor because he does not have enough information to tell him this would be a bad change.

Motion to approve carried 8-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn voting 'yes'; Bills absent.

CHANGE OF ZONE NO. 3195

and

CHANGE OF ZONE NO. 3253

FROM R-3 RESIDENTIAL TO B-2 PLANNED

NEIGHBORHOOD BUSINESS;

and

USE PERMIT NO. 133

FOR COMMERCIAL RETAIL AND OFFICE USES

ON PROPERTY GENERALLY LOCATED AT

SOUTH CODDINGTON AVENUE AND WEST VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn; Bills absent.

The Clerk announced that one of the applicants, Brian Carstens, has requested deferral until January 9, 2002.

Ray Hill of Planning staff reviewed the revised conditions of approval submitted by staff on the use permit, advising that the City is requesting that the property also be annexed.

Proponents

1. **Kent Seacrest** appeared on behalf of the property owners on the south side and concurred with the request for deferral until January 9th. They did have a neighborhood meeting with about 20 people in attendance and the developers need to decide how to better do the tree patterns along the two major arterial streets. Seacrest indicated that the developers had a good meeting with the staff, but after that meeting a new set of conditions was issued. What is really putting a dagger in the heart is the requirement to build urban road sections next to this development. Economically, it kills this project. Here we are trying to save trees. By the time we build an urban cross section with the sidewalks and bike trail, it may not be possible to save any trees. They need to do further work with staff.

There was no further public testimony.

Duvall inquired about the types of trees being required. Lynn Johnson, Director of Parks & Recreation, advised that the desire would be to maintain the same patterns as much as possible with the intent to do replacement with more desirable species over time.

Steward moved to defer, with continued public hearing and administrative action scheduled for January 9, 2002, seconded by Krieser and carried 8-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn voting 'yes'; Bills absent.

There being no further business, the meeting was adjourned at 4:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 9, 2002.

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